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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Implementation of Sections 11 and 13
of the Cable Television Consumer
Protection and Competition Act of 1992

Horizontal and Vertical Ownership Limits,
Cross-Ownership Limitations and
Anti-Trafficking Provisions

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) MM Docket No. 92-264
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**REPLY COMMENTS OF
THE NATIONAL CABLE TELEVISION ASSOCIATION**

The National Cable Television Association ("NCTA"), by its attorneys, submits the following comments in support of the Petitions for Reconsideration, filed by Time Warner Entertainment Co., Multivision Cable TV Corp. et al. and the National Private Cable Association of the Commission's decision to prohibit cable operators from acquiring existing Satellite Master Antenna Television ("SMATV") facilities within the cable operator's actual service area for the purpose of providing cable service.

**THE 1992 CABLE ACT DOES NOT PROHIBIT CABLE OPERATORS
FROM ACQUIRING CABLE SYSTEMS WITHIN THEIR SERVICE
AREAS**

The 1992 Cable Act ("Act") provides that it is unlawful for a cable operator "to offer satellite master antenna television service separate and apart from any franchised cable service, in any portion of the franchise area served by that cable operator's cable system."¹ The Commission acknowledges that the Act does not prohibit all cable/SMATV cross-ownership, but instead only bars "cable operators from providing SMATV services 'separate and apart' from the franchised cable service in the portions of

¹ Cable Television Consumer Protection and Competition Act of 1992, P.L. 102-385, Oct. 5, 1992, at §11(a)(2), codified at 47 U.S.C. §613(a)(2) (emphasis supplied).

the franchise area actually served."² But the Report and Order concludes that it was Congress' intent to flatly prohibit the acquisition by cable operators of cognizable ownership interests in existing SMATV facilities within the cable operator's service area.³ The Commission reasons that permitting cable systems to acquire existing SMATV operators will thwart the development of SMATVs as a competitive alternative to cable.

SMATV and cable reconsideration comments agree that the Act does not broadly prohibit the acquisition of SMATV operations by cable operators within their service areas.⁴ Congress' goal was much narrower. Congress wanted to prevent cable-SMATV cross-ownership only where the SMATV and cable facilities were "separate and apart." Nowhere in either the Act or its legislative history is there any suggestion that a cable operator cannot interconnect with an existing SMATV. Once interconnection occurs, by hardwire or other means, the two systems are no longer "separate and apart." At that point, the cross-ownership restriction no longer applies.

As Time Warner points out, the notion of fostering competition by banning cable operators from acquiring SMATVs is "misplaced."⁵ Cable operators and SMATVs usually do not compete once a multiple unit building has decided upon a provider of multichannel programming:

² Implementation of Sections 11 and 13 of the Cable Television and Consumer Protection Act of 1992, MM Docket No. 92-264, FCC 93-332, released July 23, 1993 ("Report and Order") at para. 119.

³ Report and Order at para. 123.

⁴ See Consolidated Comments of Time Warner Entertainment Co., Oct. 22, 1993, at 2 ("Time Warner"); Joint Petition of Multivision Cable TV Corp. et al., Sept. 7, 1993, at 3-4; Petition of National Private Cable Association et al., Sept. 2, 1993, at 10-12 ("NPCA").

⁵ Time-Warner at 4.

Rather, the often fierce competition occurs in seeking rights from the building owner to provide multichannel video programming service within that building. Once such contractual arrangements are entered into, the competitive environment will not be adversely affected if the SMATV operator is allowed to sell its business as a going concern to the franchised cable operator.⁶

Time Warner further observes that even following a sale the competitive process is not over, because building owners could, if they chose, require competitive bids when contracts come up for renewal.⁷

NPCA observes that, practically speaking, a broad prohibition discourages investment in SMATV operations, "makes the SMATV operator a weaker competitor [to cable operators] and threatens its viability overall."⁸ Where a SMATV wins the competition to serve a multi-unit dwelling, it has gained a valuable asset. Nevertheless,

The value of a SMATV operator's access rights decreases as potential bidders for those rights are eliminated. Naturally, a decrease in the SMATV operator's assets will decrease investment, and in particular, will result in reducing the amount that lenders will be willing to finance.⁹

NPCA further points out that the exit by a SMATV operator from a particular multi-unit dwelling will not necessarily result in a decrease in competition. Rather, a SMATV operator selling its rights to one property "may simply be generating the cash necessary to make worthwhile investments at its other properties, thus increasing the pressure on the franchised industry,"¹⁰ The Commission should not prevent the SMATV operator from making this choice.

⁶ Id.

⁷ Id.

⁸ NPCA at 13.

⁹ Id. (citation omitted).

¹⁰ Id.

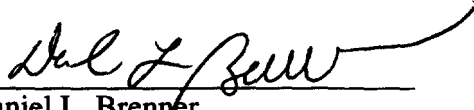
CONCLUSION

Congress adopted the cable-SMATV restriction for the limited purpose of prohibiting cross-ownership of "separate and apart" cable and SMATV systems. The Report and Order expands the prohibition beyond the limits of the statute and sound policy by barring cable system acquisitions of SMATVs within the franchise area served by the cable operator. Unless changed, the ruling will prevent commercial transactions beneficial to SMATVs, cable systems and, ultimately, consumers. The Commission should reconsider its decision, limiting the scope of the prohibition to SMATVs that are "separate and apart", and permitting cable operators to acquire SMATV systems for the purpose of integrating these systems into their cable operations.

Respectfully submitted,

NATIONAL CABLE TELEVISION
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By


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CERTIFICATE OF SERVICE

I, Leslie D. Heath, hereby certify that I have this 1st day of November, 1993 placed a copy of the foregoing "Reply Comments of the National Cable Television Association" in U.S. First Class Mail, addressed to the following:

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